

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
Filed: January 3, 2025

Filed: January 2, 2025

Ronald Craig Homer, Conway, Homer, P.C., Boston, MA, for Petitioner.
Alec Saxe, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION¹

On November 13, 2018, Brenda Hutton, (“Petitioner”), filed a petition for compensation pursuant to the National Vaccine Injury Compensation Program.² 42 U.S.C. §§ 300aa-10 to -34 (2018). Petitioner alleged that the tetanus-diphtheria-acellular-pertussis (“Tdap”) vaccination that she received on March 20, 2017, caused her to sustain neuralgia related to injection. Pet. at 1, ECF No. 1.

On January 2, 2025, the parties filed a stipulation in which they state that a decision should be entered awarding compensation to Petitioner. Stipulation at ¶ 7, ECF No. 66. Respondent “denies that [P]etitioner sustained neuralgia related to injection, denies that [P]etitioner’s alleged injury was caused-in-fact by the Tdap vaccine, and denies that the Tdap vaccine caused [P]etitioner any other injury or her current condition.” *Id.* at ¶ 6. Nevertheless, the parties agree to the joint stipulation. *See id.* at ¶ 7. I find the stipulation reasonable and adopt it as the decision of the Court in awarding damages, on the terms set forth therein.

The parties stipulate that Petitioner shall receive the following compensation:

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755.

- a. A lump sum of \$57,000.00 in the form of a check payable to Petitioner;**
- b. A lump sum payment of \$2,500.00, which amount represents reimbursement of a lien for services rendered on behalf of Petitioner by CareOregon, in the form of a check payable jointly to Petitioner and:**

**ExlService.com LLC
111 Ryan Court Suite 300
Pittsburgh, PA 15205**

Petitioner agrees to endorse this check to ExlService.com LLC.

Id. at ¶ 8. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

I approve the requested amount for Petitioner's compensation. Accordingly, an award should be made consistent with the stipulation.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

s/Herbrina D.S. Young
Herbrina D.S. Young
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

BRENDA HUTTON,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 18-1753V
Special Master Young
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Brenda Hutton (“petitioner”) filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to -34 (the “Vaccine Program”). The petition seeks compensation for an injury allegedly related to petitioner’s receipt of a tetanus-diphtheria-acellular-pertussis (“Tdap”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Petitioner received a Tdap vaccine on March 20, 2017.
3. The vaccine was administered within the United States.
4. Petitioner alleges that as a result of receiving a Tdap vaccination on March 20, 2017, she suffered neuralgia related to injection. Petitioner further alleges that she suffered the residual effects of the alleged injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on petitioner’s behalf as a result of the alleged injury.

6. Respondent denies that petitioner sustained neuralgia related to injection, denies that petitioner's alleged injury was caused-in-fact by the Tdap vaccine, and denies that the Tdap vaccine caused petitioner any other injury or her current condition.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$57,000.00 in the form of a check payable to petitioner;
- b. A lump sum payment of \$2,500.00,¹ which amount represents reimbursement of a lien for services rendered on behalf of petitioner by CareOregon, in the form of a check payable jointly to petitioner and:

ExlService.com LLC
111 Ryan Court Suite 300
Pittsburgh, PA 15205

Petitioner agrees to endorse this check to ExlService.com LLC.

These amounts represent compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

¹ This amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Oregon may have against any individual as a result of any Medicaid payments that CareOregon has made to or on behalf of Brenda Hutton as a result of her alleged vaccine-related injury following the Tdap vaccine administered on March 20, 2017, under Title XIX of the Social Security Act, see 42 U.S.C. § 300aa-15(g), (h).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and petitioner's attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursed expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in petitioner's individual capacity, and on behalf of petitioner's heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of

action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the Tdap vaccination administered on March 20, 2017, as alleged by petitioner in a petition for vaccine compensation filed on or about November 13, 2018, in the United States Court of Federal Claims as petition No. 18-1753V.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the Tdap vaccine caused petitioner's alleged neuralgia injury or any other injury or petitioner's current disabilities, or that petitioner suffered an injury contained in the Vaccine Injury Table.

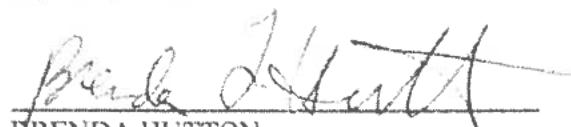
18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

卷之三

Respectfully submitted,

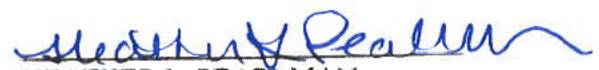
PETITIONER:


BRENDA HUTTON

ATTORNEY OF RECORD FOR
PETITIONER:

RONALD C. HOMER by
Christina Giampolillo Rule 83.1(c)(2)
RONALD C. HOMER, ESQ.
Conway Homer, P.C.
16 Shawmut Street
Boston, MA 02116
Telephone: (617) 695-1990
Email: rhomer@ccandh.com

AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:


HEATHER L. PEARLMAN
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Washington, DC 20044-0146

AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:

Jeffrey S. Beach -S
Digitally signed by
Jeffrey S. Beach -S
Date: 2024.12.17
09:18:12 -05'00' for
CAPT GEORGE REED GRIMES, MD, MPH
Director, Division of Injury
Compensation Programs
Health Systems Bureau
Health Resources and Services
Administration
U.S. Department of Health
and Human Services
5600 Fishers Lane, 08W-25A
Rockville, MD 20857

ATTORNEY OF RECORD FOR
RESPONDENT:


ALEC SAXE
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 353-7722
alec.saxe@usdoj.gov

Dated: 1/2/2025